

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MONA CARTHEL</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 189,996
<b>CEDAR VIEW GOOD SAMARITAN CENTER</b>	)	
Respondent	)	
AND	)	
	)	
<b>U.S.F.&amp;G.</b>	)	
Insurance Carrier	)	

**ORDER**

All the parties appealed the Award dated July 14, 1997, entered by Administrative Law Judge John D. Clark. The Appeals Board heard oral argument on December 22, 1997.

**APPEARANCES**

Joseph Seiwert of Wichita, Kansas, appeared for the claimant. M. Doug Bell of Coffeyville, Kansas, appeared for the respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. In addition, the Appeals Board has considered the written stipulations prepared by the parties and filed with the Division of Workers Compensation on April 11, 22, 28, and 30, 1997.

**ISSUES**

The Administrative Law Judge denied claimant's request for workers compensation benefits after finding that any injuries claimant had sustained in her January 18, 1994, accident had fully resolved. Both claimant and respondent requested Appeals Board review.

Claimant requested the Appeals Board to review the issue of the nature and extent of claimant's injury and disability. Respondent and its insurance carrier requested the Appeals

Board to review the issues whether claimant sustained personal injury by accident which arose out of and in the course of her employment with respondent, whether claimant provided respondent with timely notice of accident, and whether claimant is entitled to temporary total disability compensation and medical benefits. Those are the only issues before the Appeals Board on this review.

#### **FINDINGS OF FACT**

After reviewing the entire record, the Appeals Board finds as follows:

- (1) Claimant began working for respondent as a kitchen aid on August 31, 1993. Claimant alleges she injured her upper back and neck while lifting a trash bag on or about January 18, 1994.
- (2) Despite the severe shooting pain claimant allegedly experienced at the time of the incident, claimant admits she did not immediately report the accident to her supervisor. Claimant alleges she notified her supervisor, Cecilia Booth, the next morning.
- (3) Claimant did not seek any medical treatment for her alleged injury for approximately three months. On April 26, 1994, claimant saw a chiropractor. At the initial visit with the doctor, claimant did not relate her symptoms to lifting at work.
- (4) Claimant was a member of respondent's safety committee and understood that respondent required injured employees to immediately report and prepare written incident reports. Despite that knowledge, claimant did not prepare a written incident report until May 6, 1994.
- (5) Considering the entire record, the Appeals Board finds claimant first provided respondent with notice of her alleged accidental injury on April 26, 1994, in a telephone conversation to her supervisor.

#### **CONCLUSIONS OF LAW**

The Workers Compensation Act requires injured workers to provide their employers with notice of their accidental injuries within ten days of the occurrence. However, that ten-day period may be extended to 75 days for just cause. See K.S.A. 44-520 which provides in pertinent part as follows:

Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just

cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident . . . .

The Appeals Board finds that claimant first provided respondent with notice of accident on April 26, 1994, when she telephoned her supervisor, Cecilia Booth. That conclusion is based on the testimony of Ms. Booth coupled with the fact that claimant did not initially prepare a written incident report or otherwise make known her injury to respondent despite her knowledge of respondent's accident reporting requirements.

Claimant did not report her accidental injury within ten days of its occurrence. Respondent did not otherwise have knowledge of claimant's alleged accidental injury until claimant reported it on April 26, 1994. Because that date is beyond 75 days from the alleged date of accident, the question whether claimant had just cause to extend the reporting period is moot.

Based upon the above, claimant's request for workers compensation benefits should be denied.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that claimant's request for workers compensation benefits should be, and hereby is, denied. The Appeals Board affirms the Award denying benefits dated July 14, 1997, entered by Administrative Law Judge John D. Clark.

#### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Joseph Seiwert, Wichita, KS  
M. Doug Bell, Coffeyville, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director